
The License Question

THE LICENSE QUESTION.

— o —

As considerable misconception prevails as to the powers and duties of officials of the Local Government in granting or refusing licenses to sell intoxicating liquors, either wholesale or retail, in municipalities where a prohibitory by-law is in force, it is desirable that the law on the subject should be clearly known. And as the question has repeatedly come before the Courts, and may be regarded as definitely settled, it is not difficult to arrive at the true position.

In the province of Quebec, there are, so to speak, three sets of laws, directly bearing on the liquor traffic, independently of the Dunkin Act. First, there is the general license law of the province, under which the traffic is regulated and controlled, and which renders it incumbent on all traders, whether wholesale or retail, to obtain in a given way and for a given price, varying according to locality, permission to carry on their business for a limited time. Secondly, we have in those parts of the Province regulated by the Municipal Code, the provisions of that code which in general terms authorize municipalities to prohibit altogether the sale of intoxicating liquors within their boundaries by retail, or to speak more accurately, in quantities less than two gallons or a dozen bottles. And lastly, we have the Dominion Statute—"The Canada Temperance Act"—by observing the provisions of which, cities and counties, if a majority of the electors think proper, may absolutely prohibit all traffic in intoxicating liquors, within their limits, while the act is in force. There are thus one Dominion and two Provincial Statutes bearing on this important subject.

While all agree that the promotion of temperance is desirable and that the regulation of the liquor trade should be strictly controlled by law, there are many—and their views are entitled to great respect—who hold that, in face of the admitted evils and miseries which accompany it, it should be prohibited altogether, throughout each Province and throughout the Dominion, if possible, and that at all events municipalities should be empowered to follow out their own views in the matter. And they ask: Why does not the Local Government of this Province solve the difficulty in the latter case, by simply withholding all licenses, whether for wholesale or retail trade, in those municipalities which have pronounced in favor of prohibition?

Now, without entering into the disputed question whether prohibition in itself is right or wrong, expedient or inexpedient, desirable or undesirable, the answer of the Government of Quebec to this question is a plain one; and their defence of the course they have pursued and are pursuing—if defence is required—is, it is submitted, conclusive. And the reply is this: Under the law of the Province of Quebec, as it now stands, assuming that law to be constitutional, municipalities have no power to prevent wholesale traffic, nor have the local authorities power to refuse wholesale licenses to those who properly apply for them. To do so would be in the apprehension of the Government to violate the law; and so their course has been and will continue to be to instruct the Revenue Collector, in all cases where a municipal by-law is in force, prohibiting retail trade, to refuse to issue retail licenses, until compelled to do so by the authoritative order of a court of last resort. In other words they propose to assume and stand by the constitutionality of articles 561 to 567 of the Municipal Code, till they are definitely pronounced invalid, a contingency much to be regretted should it occur. But further than this they cannot go. To instruct their officers to refuse to issue wholesale licenses, in the absence of an enabling statute, and indeed in the face of existing statutes, would be fraught with mischief, as in effect substituting the will of the Executive for the law of the land.

In *Ex parte Edson*, 7, L. N. page 68, Judge Brooks held, "That a municipal corporation had no power under Article 561 of the Municipal Code to prohibit the sale of intoxicating liquors within the limits of the municipality", and that a Local Legislature cannot prohibit the sale of liquors, but may only legislate exclusively upon this subject for the purpose of raising a revenue for provincial, local or municipal purposes. Again in case No. 114, *Three Rivers, Dussureau vs. Lasalle*, License Inspector, Judge Bourgeois condemned the license inspector, Lasalle, to grant the Plaintiff a license, on his tendering, with his certificate, the amount due for Provincial revenue purposes, notwithstanding the existence of a prohibitory by-law.

But it may be said, if the law as it now stands is insufficient to enable municipalities to prohibit the sale of liquor in all shapes within their limits, why is not the law amended, and why has no measure with that end in view been introduced into and passed by the Legislature? Here again the answer of the Government is plain. Granting, as they are disposed to do, that such a measure would be desirable, it is under our constitution, as interpreted by the highest authorities, one beyond the powers of a Provincial Legislature. To pass such an act in opposition to the repeated decisions of our courts—to pass it for the purpose of its disallowance by the Governor General, or to have it declared null by the first Court before which it came, would be an unmixed evil. If local prohibition in a wider sense than that granted by the Canada Temperance Act is

desirable, the boon must be sought from the Parliament of Canada; and no advantage can be obtained by the Legislature assuming responsibilities which it is not called upon to assume or exercising functions which it does not possess.

It must be borne in mind that with us the Government of the Province is one of enumerated powers, which are specified in the B. N. A. Act, and in this respect differs from the constitution of the Dominion Parliament, which is authorized "to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces;" and that "any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Therefore "the regulation of trade and commerce," being one of the classes of subjects enumerated in section 91, is not to be deemed to come within any of the classes of a local or private nature assigned to the Legislatures of the Provinces. In a word there are two powers which may be exercised by the Provincial Legislatures: the one legitimate, to regulate; the other unconstitutional, to prohibit. As the truth of this proposition is obviously most important, it is advisable to state at some length the decisions on which the Government rely.

The question first arose in New Brunswick in 1875. The Legislature of that Province, by an Act subsequent to Confederation, declared that "no license for the sale of spirituous liquors should be granted or issued within any parish or municipality in the Province, when a majority of the rate-payers resident in such parish or municipality should petition the sessions or Municipal Council against issuing any license within such parish or municipality." The Supreme Court of New Brunswick, then presided over by Chief Justice Ritchie, now Chief Justice of the Supreme Court of Canada, unanimously held the act *ultra vires*, being clearly of opinion that in passing it the Legislature "assumed to exercise a legislative power which belonged exclusively to the Parliament of Canada."

In 1878 the Federal Statute known as the Canada Temperance Act and above referred to became law, and soon after was declared in force in the city of Fredericton. The question of the competence of Parliament to pass an act virtually establishing local option throughout the Dominion was raised at once in the New Brunswick Courts and ultimately in appeal before the Supreme Court of Canada, in the well known case of the City of Fredericton vs The Queen, in which the constitutionality of the Act was upheld. A few extracts from the opinions of the judge may be given. 3 Can. S. C. R. 505.

Ritchie, C. J. : " When I had the honor to be Chief Justice of New Brunswick, the question of the right of the Local Legislatures to pass laws prohibiting the sale or traffic in intoxicating liquors came squarely before the Supreme Court of that Province ; and that Court in the case of *Regina v. The Justices of Kin's County* unanimously held that under the B. N. A. Act the Local Legislature had no power of authority to prohibit the sale of intoxicating liquors, and declared the Act with that intent *ultra vires* and therefore unconstitutional. I have carefully reconsidered the judgment there pronounced and I have not had the least doubt raised in my mind as to the soundness of the conclusion at which the Court arrived on that occasion. I then thought the Local Legislature had not the power to prohibit ; I think the same now. I then thought the power belonged to the Dominion Parliament ; I think so still.

" To my mind it seems very clear that the general jurisdiction which is thus conferred emphatically negatives the idea that there is not within the Dominion legislative power or authority to deal with the question of prohibition in respect to the sale or traffic in intoxicating liquors or any other articles of trade or commerce. Apart from the general legislative power which, I think, belongs to the Dominion Parliament, I do not entertain the slightest doubt that the power to prohibit is within the power to regulate. It would be strange, indeed, that, having the sole legislative power over trade and commerce, the Dominion Parliament could not prohibit the importation or exportation of any article of trade or commerce ; or, having that power, could not prohibit the sale and traffic, if they deemed such prohibition conducive to the peace, order, and good government of Canada.

Fournier J.—" After having carefully considered the important questions which arise on this appeal, and having the opportunity of taking communication of the able and elaborate judgment of the Chief Justice, I need only say that I entirely concur in the view taken by him as to the constitutionality of the Canada Temperance Act."

Taschereau, J.—" It is clear that the Canada Temperance Act, 1878, could not be enacted by the Provincial Legislatures, for the simple reason that they have only the powers given to them by the B. N. A. Act, and that the said B. N. A. Act does not give them the power to effect such legislation.....

" It seems to me the admission that the Local Legislature could not pass such an Act implies the admission that the Dominion Parliament can do so. Once the power of legislation over a certain matter is found not to vest in the Provincial Legislature the question is solved, and that power necessarily falls under the control of the Dominion Parliament, subject of course, to the exigencies of our colonial status.....

"I hold then that the Canada Temperance Act, 1878, is constitutional."

Gwynne, J.—"Turning to the Act we find it entitled 'An Act respecting the Traffic in Intoxicating Liquors', its object as stated in the preamble is to promote temperance as a thing most desirable to be promoted in the Dominion. The means adopted in the Act for obtaining this end consists in regulating and restraining the exercise of the trade or traffic in intoxicating liquors. Reading therefore the object of the Act to be, as it was read in the Court below, namely, to endeavor to remove from the Dominion the national curse of intemperance, and observing that the means adopted to obtain this end consists in the imposition of restraints upon the mode of carrying on a particular trade, namely, the trade in intoxicating liquors, it cannot admit of a doubt that power to pass such an Act, or any act assuming to impose any restraint upon the traffic in intoxicating liquors, or to impose any rules or regulations, not merely for municipal or police matters, to govern the persons engaged in that trade, and assuming to prohibit the sale of liquors, except under and subject to the conditions imposed by the Act, is not only not given exclusively, but is not at all given to the Provincial Legislatures. The principles of Regina and Justices of King's decided and properly so decided, in the Court from which the appeal comes, is equally applicable to exclude from the jurisdiction of the Local Legislatures all power to pass such an Act.

"The Act then being *ultra vires* of the Provincial Legislatures as dealing with a subject not exclusively assigned to the Provincial Legislatures, can it question, for that point being so determined, it follows by the express provision of the B. N. A. Act that it is within the jurisdiction of the Dominion Parliament.

In 1882, the question came before the Judicial Committee of the Privy Council, in *Russell vs. The Queen*, (Reported 46, L. T. (N. S.), 889), which was virtually an appeal from the judgment of the Supreme Court, in the case first cited. In the result their Lordship held that the Temperance Act was within the jurisdiction of the Dominion Parliament, and not included within the classes of subjects enumerated in section 92 of the B. N. A. Act, 1867, under which it was contended the impugned legislation fell to the Provinces.

Again in the case of *Hodge vs. The Queen*, decided in the Privy Council, in 1882, (Reported 9 Appeal cases 117), their Lordships held that the powers intended to be conferred on Provincial Legislatures by the B. N. A. Act "when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, etc., licensed for the sale of liquors by retail, and such as are calculated to preserve in

the municipality peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament, and do not conflict with the provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted."

These views have been of course adopted in our own Courts, notably by Sir William Meredith, the late distinguished Chief Justice of the Superior Court of this province, in *Blouin v. The Corporation of Quebec*, 7 Q.L.R. p. 18.

In *ex parte Cooley* 21 L. C. J. 182, Mr. Justice Dunkin held, "that the regulation of the traffic in intoxicating liquors is within the jurisdiction of the Parliament of Canada." This case was reversed by the Quebec Court of Queen's Bench, but the judgment of the Queen's Bench was by consent reversed in the Supreme Court.

From these decisions it is abundantly clear that the power of prohibiting the traffic in intoxicating liquors is vested exclusively in the Parliament of Canada; that the power of modifying or extending existing laws with that object rests with it and with it alone, and that any measure in that direction passed by a Provincial Legislature would be void. If the present state of matters is unsatisfactory, the responsibility does not fall on the Legislature of Quebec, for there can be no responsibility where the right to alter or amend is denied, and those therefore who are anxious to restrict and prohibit the sale of liquor should turn their attention to the Federal Parliament, which alone is entitled to legislate on the subject.

While the right to grant or refuse licenses is not possessed and therefore cannot be conferred by the Legislature, it may, however, as was determined in *Hodge & The Queen*, make reasonable regulations of a police or municipal character of a local nature for the preservation of good order and for the good government of inns, taverns and other places where liquor is sold. For revenue purposes it is entitled also to exact such fees on the issue of licenses as may be deemed expedient. For sound legislation of this kind and for its proper enforcement, the Legislature and the Government are responsible. If in these respects, or in any of them, the existing law is defective or susceptible of amendment the Government are prepared to welcome and adopt any suggestion tending to remedy in any measure an evil which is unfortunately too apparent: and meanwhile they will continue strictly to carry out and enforce the regulations now in operation.

and disorderly
the general
liament, and
ich does not

notably by
erior Court
18.

" that the
tion of the
of Queen's
ersed in the

ibiting the
of Canada ;
rests with
Provincial
actory, the
can be no
efore who
attention
ject.

therefore
rmined in
character
vernment
poses it is
xpedient.
egislature
hem, the
prepared
an evil
trictly to